



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 5, 1999

**James Tolcdano
James Toledano Law Office
18201 Von Karman Avenue
Suite 1170
Irvine, CA 92612-1005**

RE: MUR 4389 and 4652

Dear Mr. Toledano:

On June 20, 1996, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on February 23, 1999, found that there is reason to believe you violated 2 U.S.C. §§ 441f and 432(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred [REDACTED]

[REDACTED]

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Eugene H. Bull, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Designation of Counsel Form
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: James Toledano

MUR: 4389 and 4652

I. GENERATION OF THE MATTER

This matter was initiated by a *sua sponte* submission received from the Orange County Party and Central Committee on May 20, 1996 and a complaint received from Michael J. Schroeder on June 17, 1996 against the Orange County Democratic Central Committee and Zeke Hernandez, as treasurer (the "Democratic Committee" or the "Committee"), James Toledano, James Prince, Debra Lee LaPrade, and Paul LaPrade. See 2 U.S.C. § 437g(a)(1).

According to the available information, Mr. Toledano, while he was the Democratic Committee's Chairman in March of 1996, received a \$10,000 contribution check from the LaPrades and deposited the check, which was payable to the Democratic Committee, into an account at a bank where the Committee may have banked at an earlier time. Mr. Toledano opened the account in the name of the Democratic Committee, but set up the account with his signature as the sole required one. He stated that he did not inform other members of the executive committee about receiving the \$10,000 and his plan to use it for a mailer that resulted in an in-kind contribution to the Prince Committee.

Shortly before the March 26, 1996 primary election in California's 46th Congressional District, Mr. Toledano used the \$10,000 contribution to produce and distribute a mailer to the voters of the district, communicating the Democratic Committee's endorsement of Jim Prince and urging citizens to vote on election day. In an affidavit submitted with his initial response in

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this matter, Mr. Toledano states that he called the Prince campaign and requested a photograph of Jim Prince for the mailer, and was referred to a photographer who ultimately delivered the requested photograph. The Prince Committee later reported the mailer as an in-kind contribution from the Democratic Committee in its 1996 April Quarterly Report, after the facts which became the substance of the allegations herein received press coverage.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

In his initial response to the complaint in this matter, Mr. Toledano states that he received a phone call from Ms. LaPrade who offered to donate \$10,000 "to advance the purposes of the Orange County Democratic Party in the primary." Mr. Toledano took the \$10,000 contribution and deposited it in a separate bank account he opened in the name of the Orange County Democratic Party, and spent the funds on the mailer mentioned in the complaint. He asserts that the mailer was "intended in good faith to be an exempt slate mailer . . . under what [he] understood was the general exemption for educational advertising by a political party to promote voter awareness . . ." and cites 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9) as statutory and regulatory authority.

Mr. Toledano further claims that he would not have accepted the contribution with "any strings attached," and denies knowing at the time the contribution was made that Ms. LaPrade was the sister of Jim Prince. He states that had he known, "[he] would not have taken the [contribution] without further inquiry; [or] probably he would not have taken the [contribution] at all because of the way an otherwise legal contribution might have looked to the other candidates."

B. Analysis

Mr. Toledano's belief that his use of the \$10,000 contribution for the mailer was consistent with the requirements for exemption from the definition of a contribution under 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9) does not survive scrutiny. The mailer featured only 2 candidates for public office, rather than the 3 or more required by the Act. And as the evidence suggests that the LaPrades' contribution to the Democratic Committee was part of a scheme to circumvent the contribution limits established by the Act, any violations resulting from the contribution cannot be overlooked.

First, the Federal Election Campaign Act of 1971, as amended (the "Act"), provides that "every person who receives a contribution for a political committee which is not an authorized committee shall, if the amount of the contribution is in excess of \$50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution."

2 U.S.C. § 432(h)(2)(B). As Mr. Toledano admits to receiving a \$10,000 contribution check that was made payable to the Democratic Committee from the LaPrades, and because he did not forward the contribution to the treasurer of the Democratic Committee, but instead, deposited the contribution into a bank account which he opened without informing other members of the executive committee, there is reason to believe he violated 2 U.S.C. § 432(b).

In addition, the evidence suggests that the LaPrades' intended their contribution to benefit the Prince Committee by the artifice of passing it through the Democratic Committee. Such a scheme is unlawful under the Act, as the Act prohibits any person from "mak[ing] a contribution in the name of another person or knowingly to permit his name to be used to effect such a contribution." The regulation implementing 2 U.S.C. § 441f has interpreted "knowingly

mak[ing] a contribution in the name of another person" as including within its parameters "knowingly help[ing] or assist[ing] any person in making a contribution in the name of another." 11 C.F.R. § 110.4(b). According to the available evidence, the LaPrades gave their \$10,000 contribution check to the Democratic Committee at a time when they and their children had made their maximum allowable contributions to the Prince campaign. At the time they contributed the \$10,000, they resided in Phoenix, Arizona, and had no ties to California's 46th Congressional District apart from Jim Prince, Ms. LaPrade's brother. Further, a *Los Angeles Times*¹ article reported that Prince's campaign discussed the idea of giving the local Democratic Party money to publicize his candidacy. However, the idea "died out" because the campaign lacked the funds to pursue it. The article further attributed to Prince the statement that his "whole family was very enthusiastic about the campaign," and to Prince's father the statement that "[the LaPrade contribution] was given to use for the Democratic Party to get the vote out" This suggests that the intended destination of the LaPrades' \$10,000 contribution to the Democratic Committee was really the Prince Committee.

Mr. Toledano, as the Democratic Committee chairman, was likely aware that the Prince Committee had at one point considered a plan to have the Democratic Committee produce and distribute a mailer similar to the one that was ultimately produced and distributed. And notwithstanding Mr. Toledano's denial, the evidence suggests that, prior to receiving the \$10,000 contribution check from the LaPrades, he was aware Jim Prince was Debra LaPrade's brother. Mr. Toledano stated in a conversation with an FEC attorney that he believed he spoke with

¹ Rebecca Trounson, *Chairman's Actions Anger O.C. Democrats*, *Los Angeles Times*, April 2, 1996, at A-1.

Debra LaPrade on two or three occasions prior to the LaPrades writing their \$10,000 contribution check to the Democratic Committee. Yet, he maintains, implausibly, that he was not aware of the relationship between Debra LaPrade and Jim Prince during any of these conversations, and never once inquired why the LaPrades who lived in Arizona wanted to contribute money to the Democratic Committee in Orange County. It is also significant that throughout the Commission's investigation, the LaPrades never once denied that Debra LaPrade informed Mr. Toledano of her relationship to Jim Prince.

Therefore, there is reason to believe Mr. Toledano violated 2 U.S.C. § 441f by assisting the LaPrades to make a contribution to candidate Prince in the name of the Democratic Committee.

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